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1 UNITED STATES DISTRICT COURT
2 SOUTHERN DISTRICT OF NEW YORK

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3 UNITED STATES OF AMERICA,

4 v.

23 Cr. 302 (PGG)

5 HUBEI AMARVEL BIOTECH CO. LTD.
6 *et al.*,

Conference

7 Defendants.

8 -----x

9 New York, N.Y.
10 November 18, 2024
3:10 p.m.

11 Before:

12 HON. PAUL G. GARDEPHE,

13 District Judge

14 APPEARANCES

15 DAMIAN WILLIAMS

16 United States Attorney for the
Southern District of New York

17 KEVIN SULLIVAN

Assistant United States Attorney

18 LEONARDO M. ALDRIDGE

19 DAVID MOU

Attorneys for Defendant QINGZHOU WANG

20 MARLON G. KIRTON

21 Attorney for Defendant YIYI CHEN

22 Also Present:

23 Lily Lau, Interpreter

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(Case called)

MR. SULLIVAN: Kevin Sullivan on behalf of the government.

MR. ALDRIDGE: Good afternoon, your Honor. This is court-appointed counsel Leo Aldridge on behalf of Mr. Wang, also representing him is co-counsel David Mou.

MR. MOU: Good afternoon, your Honor.

MR. KIRTON: Marlon Kirton for Ms. Chen. Good afternoon.

THE COURT: Good afternoon.

I understand that there has been a superseding indictment so it's necessary for me to arraign the defendants on that.

I further understand that the superseding indictment is nearly identical to the original indictment, but, nonetheless, we have to proceed with an arraignment.

Mr. Wang, you are here with Mr. Aldridge as your attorney; is that correct?

DEFENDANT WANG: Yes.

THE COURT: And Ms. Chen, you are here with Mr. Kirton as your attorney; is that correct?

DEFENDANT CHEN: Yes.

THE COURT: Mr. Wang, and Ms. Chen, have each of you received a copy of the superseding indictment which reflects the charges against you? Mr. Wang?

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1 DEFENDANT WANG: Yes.

2 THE COURT: And Ms. Chen?

3 DEFENDANT CHEN: Yes.

4 THE COURT: And has the superseding indictment been
5 read to you in Mandarin, Mr. Wang?

6 DEFENDANT WANG: Yes.

7 THE COURT: And Ms. Chen?

8 DEFENDANT CHEN: Yes.

9 THE COURT: And have each of you discussed the
10 superseding indictment with your attorney, Mr. Wang?

11 DEFENDANT WANG: Yes.

12 THE COURT: Ms. Chen.

13 DEFENDANT CHEN: Yes.

14 THE COURT: You should understand in Count One of the
15 superseding indictment you are charged with violating 21,
16 United States Code, Section 846, which prohibits conspiring to
17 traffic in fentanyl.

18 Count Two charges you with violating United States
19 Code, Section 963 which prohibits conspiring to import
20 fentanyl-precursor chemicals with the intention to manufacturer
21 fentanyl.

22 Count Three charges you with violating 21, United
23 States Code, Section 959(a), which prohibits importing
24 fentanyl-precursor chemicals into the United States with the
25 intent to manufacture fentanyl.

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1 Count Four charges you with violating 21, United
2 States Code, Section 959(a), which prohibits importing
3 methamphetamine-precursor chemicals into the United States.

4 Count Five charges you with violating, 18, United
5 States Code, Sections 1956(f) and 1956(h), which prohibits
6 conspiring to commit money laundering.

7 Do each of you understand that these are the charges
8 against you in the superseding indictment?

9 MR. KIRTON: Your Honor, if I may I don't believe my
10 client is charged with all five counts in the indictment. I
11 don't believe she is charged in Count Four. You can correct me
12 if I'm wrong.

13 THE COURT: Is that true, Mr. Sullivan?

14 MR. SULLIVAN: Yes, your Honor, I'm just
15 double-checking. Yes, not Count Four and not Count Three.

16 THE COURT: All right. So Ms. Chen, you are not
17 charged in Counts Three and Four. You are charged in the other
18 three counts that I discussed. Do you understand that?

19 DEFENDANT CHEN: Yes.

20 THE COURT: All right.

21 Do either of you wish me to read the superseding
22 indictment to you now here in open court, Mr. Wang?

23 DEFENDANT WANG: Not necessary. Thank you.

24 THE COURT: Ms. Chen, do you want me to read the
25 indictment to you now, here in open court?

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1 DEFENDANT CHEN: No, thanks.

2 THE COURT: All right. Then I will ask you now as to
3 each of the charges against you, how do you plead: Guilty or
4 not guilty?

5 As to Count One, Mr. Wang, guilty or not guilty?

6 DEFENDANT WANG: Not guilty.

7 THE COURT: Ms. Chen, guilty or not guilty?

8 DEFENDANT CHEN: No.

9 THE COURT: As to Count Two, Mr. Wang, guilty or not
10 guilty.

11 DEFENDANT WANG: No.

12 THE COURT: Ms. Chen, guilty or not guilty?

13 DEFENDANT CHEN: Not guilty.

14 THE COURT: As to Count Three, Mr. Wang, guilty or not
15 guilty?

16 DEFENDANT WANG: No.

17 THE COURT: As to Count Four, Mr. Wang, guilty or not
18 guilty?

19 DEFENDANT WANG: No.

20 THE COURT: And as to Count Five, Mr. Wang, guilty or
21 not guilty?

22 DEFENDANT CHEN: No.

23 THE COURT: Ms. Chen, guilty or not guilty?

24 DEFENDANT CHEN: Not guilty.

25 THE COURT: All right. I'd like an update from the

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1 government as to discovery.

2 MR. SULLIVAN: Yes, your Honor. Discovery is
3 substantially complete. The last few productions have been of
4 the nature of jail calls and summary translations of those jail
5 calls to the individual, produced to the individual defendants.
6 I think most recently on November 14, we produced a two-page
7 production where we had discovered a prior document had a blank
8 page in it, so we reproduced that.

9 We were last before the Court on July 25th. What we
10 were in the midst of doing at that time was producing, from the
11 devices, material that we deemed responsive to our warrants.
12 We have continued since July to do that on a rolling basis, and
13 I don't anticipate any meaningful production of material from
14 the devices at this point, given what we produced to date,
15 which has been substantial.

16 THE COURT: All right. Do the defense lawyers have
17 any complaints about discovery they would like me to hear about
18 today?

19 MR. ALDRIDGE: No, your Honor.

20 MR. KIRTON: Yes, your Honor. My client has not been
21 able to review the discovery on the MDC computer in the old
22 building, the female building. The discovery coordinator sent
23 her copies of the two cell phones and the laptop computer. She
24 was not able to look at any of those discs we sent to her. I
25 sent her my copy. She still could not open up that drive. The

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1 government sent a copy that I sent to my client. She was able
2 to open up only the PDF documents and nothing else. We had
3 some discussions with the government about this. They have
4 been accommodating as much as they could, but at this point I'm
5 going to make an application for a laptop to be sent to
6 Ms. Chen so she could review the entirety of discovery. I
7 don't know what the government's position is but they done all
8 they could do to give her all the discovery she is entitled to
9 and she still could not open up and review all of the discovery
10 in this case.

11 THE COURT: Mr. Sullivan, have you attempted to
12 address this problem.

13 MR. SULLIVAN: Yes, your Honor. So Mr. Kirton had
14 previously advised us of some issues, I think as the Court was
15 also well aware at prior conferences, of some issues with the
16 computers at MDC. We were in communication with MDC back in
17 October regarding some of these issues. We also produced to
18 the defendant, because there was some thought that, perhaps, it
19 was the large phone extractions that were on these drives that
20 might be making things difficult just to open the drive or
21 somehow corrupting files. So we, in fact, then in October
22 reproduced to the defendant, to Ms. Chen, every single
23 production we made to date with the raw phone extractions
24 stripped out so if that was the potential problem, we could
25 eliminate that.

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1 We understood after that production, I believe
2 Mr. Kirton informed us, that the defendant was having issues
3 opening txt files and Excel files. So we went back to MDC to
4 learn more about what their system supports. We got the
5 supported file formats from MDC. Excel and txt files are
6 supported, PDFs are supported. The Microsoft Suite is
7 supported. It sounds like there might be an issue with the
8 phone extractions. Perhaps that's the sole issue. We
9 obviously have produced responsive PDF sets and machine
10 translation sets of what we have been pulling off of the
11 phones. So we understand, from Mr. Kirton, that PDFs are not
12 an issue to open within the jail.

13 If it's the phone extractions themselves, those images
14 of the devices. We are not confident that a laptop would
15 necessarily solve that problem. We can't open them on our own
16 laptops. We have to use a stand-alone desktop computer. These
17 are very large device images.

18 In terms of any specific issues that Ms. Chen is
19 having, we have advised that those are typically raised with
20 the unit head. We don't know if that's been done. But we've
21 tried everything we can to troubleshoot it. We don't think
22 laptop is necessarily the answer here. It sounds like she is
23 able to review the balance of discovery. I think apparently
24 it's the raw extracts of the devices that's at issue, but we
25 have been are producing the responsive sets from those devices

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1 of the material that we deem responsive to warrants and
2 relevant to our case in chief.

3 That's where we are. I'd like to earn a little bit
4 more from defense about the particular issues that still
5 remain, but we don't think a laptop is necessarily going to
6 solve a problem. We also understand the computers are
7 relatively new. They were placed within the last few months
8 within her unit, so it's not like these are ancient devices
9 that's been with the government for years.

10 THE COURT: Mr. Kirton?

11 MR. KIRTON: Your Honor, I think the issue is
12 capacity. Other than the PDF documents, the computers at the
13 MDC -- I know they are new -- cannot download any other
14 documents. There is just not enough capacity in those machines
15 to review the other documents.

16 She raised this issue with a unit manager on a number
17 of occasions. The response to my client was, "ask the Court to
18 give her a laptop." That was the response.

19 The only discovery she has been able to review in full
20 was the very first set, which was turned over in 2023.
21 Everything after that, she's not been able to download the
22 entirety of the production.

23 So I think that's my understanding of the problem.
24 The issue was raised to the manager, and that was her response
25 to my client, "get a laptop."

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1 THE COURT: Well, the Assistant just told us that he
2 can't open the files on his laptop. So it seems unlikely that
3 if we give Ms. Wang a laptop she is going to have any better
4 luck.

5 MR. KIRTON: Well, I think I can open it on my laptop.
6 First of all, I spoke with Mr. Aldridge about this. He
7 recommended we contact the data mill to see if they have a
8 compatible laptop. I've spoken to the coordinator, David Davo.
9 He's indicated to me that he has laptops available to give to
10 the MDC with the government and the Court's permission.

11 THE COURT: Mr. Sullivan, will need to do this. I
12 can't afford any delay. I don't know if it's going to work but
13 I want a report back from you guys in a week as to whether we
14 made progress on this because I'm concerned.

15 Mr. Sullivan, can you make this happen?

16 MR. SULLIVAN: I will have to talk to MDC. It's not
17 up to the government, but we will relay everything that has
18 been conveyed here in the Court to the folks at MDC, and we
19 will do our best.

20 So the record is clear, after that production of
21 everything, we were led to believe by Mr. Kirton that the only
22 remaining issues other than the phone extracts were any Excel
23 files or txt files.

24 To give your Honor a sense, the balance of discovery
25 is in large part in PDF format. So I don't think it's been

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1 sitting around unreviewed by Ms. Chen if she is able to open
2 PDFs. The government understands the Court's concern,
3 appreciates it, and we will go to MDC and do the best we can.

4 THE COURT: If the lawyers need any orders from me or
5 anything else I can do, you can let me know. You are going to
6 send me a letter in a week's time telling me where we are. If
7 we are not in a good place, I will put it down for another
8 conference because I'm concerned.

9 Any other issues you want to raise, Mr. Kirton?

10 MR. KIRTON: The medical issues have been essentially
11 resolved. The headache issue has been resolved. The issue
12 with persons in her unit smoking has been resolved. Those
13 persons have been removed from that unit. There was also
14 another issue that came up, maybe about three weeks ago. It
15 involved her A1C level being very high, that's also been
16 resolved recently as well.

17 The only outstanding issue is she is having daily nose
18 bleeds. She still gets nose bleeds every morning at the MDC.
19 After the Court signed the order that I submitted, she received
20 medical attention and was given, I guess, the opportunity to
21 purchase a nasal spray. She purchased that spray, but it was
22 actually expired. She's still using the spray, but it still
23 has not worked. So she still gets nose bleeds in the morning.
24 I'm in contact with my client about how to resolve this. Quite
25 frankly, I'm not confident she can get this issue resolved at

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1 the MDC. But I don't think my client wants to leave the MDC
2 for a number of reasons. I will notify the Court if I need to
3 notify the Court.

4 My only other application would be to have her removed
5 from the MDC to another facility in order to get her medical
6 treatment for the nose bleeds. That's basically the only
7 outstanding issue in terms of the medical treatment.

8 THE COURT: Well, I want the problem addressed. My
9 hope is it can be addressed at the MDC. But, Mr. Sullivan, if
10 it can't be addressed at the MDC, I'll have to consider whether
11 it's necessary to move the defendant. So can you intercede
12 with the medical staff there and find out what can be done to
13 help Ms. Chen problem with the nose bleeds?

14 MR. SULLIVAN: Yes, your Honor.

15 THE COURT: Is there any thought, Mr. Kirton, as to
16 what is causing this?

17 MR. KIRTON: Not sure, your Honor. I spoke to her
18 about this. She did not have this problem at home in China. I
19 think it -- I think she was told that the air is fairly dry in
20 New York.

21 THE COURT: That's what it sounds like.

22 MR. KIRTON: But I don't really know.

23 THE COURT: So Mr. Kirton, in that letter that the
24 lawyers are going to send me a week's time, I want to you tell
25 me what progress you made on the nose bleed problem.

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1 And Mr. Sullivan, you will include in the letter the
2 efforts you've made to address it. Okay?

3 MR. SULLIVAN: Yes, your Honor.

4 THE COURT: Anything the lawyers want to raise with me
5 before I turn to the pretrial motion that have been filed?

6 MR. SULLIVAN: Your Honor, I'm happy to hold off until
7 you are done with the pretrial motions. With respect to a few
8 additional or I guess one additional scheduling date, the
9 government has turned over expert notices. We turned over a
10 number of expert notices on November 8 and a final expert
11 notice on November 14. We've discussed with defense that they
12 notice any experts they intend to offer at trial by
13 December 4th, and we respectfully request that the Court enter
14 a scheduling order to that effect.

15 THE COURT: Mr. Aldridge, do you intend to offer any
16 expert testimony?

17 MR. ALDRIDGE: Perhaps. I can't represent to the
18 Court that is going to happen with certainty. We are trying to
19 secure experts, and we conveyed to the government that
20 December 4th would be the best date for disclosures.

21 THE COURT: Okay. What about you, Mr. Kirton?

22 MR. KIRTON: Possibly. I think both sides, both
23 counsel have an interest in the chemist, certainly, to consult,
24 possibly to testify. I could just speak to my efforts. There
25 was a list of chemists on the CJA website. I called all of

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1 them. No one has called me back. I do have a separate
2 reference book that I could use for an expert who can consult.
3 I think we both have an interest in trying to get a chemist in
4 this case.

5 THE COURT: Are you uncomfortable with the November 4
6 date that the government mentioned?

7 MR. KIRTON: No, your Honor.

8 THE COURT: I will issue an order providing discovery
9 defense expert materials by December 4th.

10 I would ask the government to give me a copy of
11 whatever disclosures have been made so far to the defendants so
12 I have an understanding of what's coming down the pike.

13 MR. SULLIVAN: Yes, your Honor.

14 THE COURT: Anything else before I turn to pretrial
15 motions?

16 MR. SULLIVAN: Not from the government.

17 MR. KIRTON: No, your Honor.

18 MR. ALDRIDGE: No, your Honor.

19 THE COURT: Defendant Wang filed pretrial motions.
20 They are on the docket at No 76 to 77. Defendant Wang has
21 moved for a severance from Defendant Chen on grounds of
22 mutually antagonistic defenses. See, Wang severance brief
23 Docket No. 76 at page 2.

24 Wang asserts that his defense will include "his lack
25 of knowledge, a dearth of *mens rea* about the transactions, and

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1 conversations that Yang held with a confidential source. And
2 about the full context of the conversations that Ms. Chen
3 incompletely or selectively translated." *Id.* at page 5.

4 Wang also says that he, "expects that Ms. Chen's
5 defense will include arguments to the effect that she was just
6 translating the conversations between Mr. Wang and confidential
7 sources or just following orders from Mr. Wang, who was
8 supposedly higher up in the ladder than her."

9 Wang goes on to say that Chen "will, more likely than
10 not, point the proverbial finger against Mr. Wang, creating
11 antagonistic defenses that will defeat Mr. Wang's rights to due
12 process and a fair trial." *Id.*

13 The government argues that Wang's severance motion
14 should be denied because "Wang and Chen are indicted together
15 and are alleged to have participated in a common scheme and
16 plan." And the Second Circuit has repeatedly rejected "finger
17 pointing" as a basis for a severance. Citing the government's
18 opposition Docket No. 82 at page 23.

19 As to the legal standards for joinder and severance,
20 Federal Rule of Criminal Procedure 8(b) provides that two or
21 more defendants may be joined in a single indictment, "if they
22 are alleged to have participated in the same act or transaction
23 or in the same series of acts or transactions constituting an
24 offense or offenses." Citing Federal Rule of Criminal
25 Procedure 8(b).

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1 Joinder of defendants in multiple-count indictments is
2 proper where the charged conduct is "unified by some
3 substantial identity of facts or participants or arises out of
4 a common scheme or plan." Citing *United States v. Attanasio*,
5 870 F.2d 809 at 815 (2d Cir. 1989).

6 Joinder may be appropriate even where a defendant is
7 not charged in a main conspiracy count naming another
8 defendant. Citing *United States v. Rittweger*, 524 F.3d 171 at
9 177 to 178 (2d Cir. 2008).

10 The Second Circuit stated that joinder is proper when
11 "common factual elements" of different charges are readily
12 apparent. Citing *United States v. Turoff*, 853 F.2d 1037 to
13 1044 (2d Cir. 1988).

14 Thus "counts may be connected if one of the offenses
15 depends upon or necessarily leads to the commission of the
16 other or if proof of one act constitutes or depends upon proof
17 of the other." Citing *United States v. Shellef*, 507 F.3d 82 at
18 98 (2d Cir. 2007).

19 Similarly, where one offense stems from another that
20 may "provides a second basis for joinder under Rule 8(b).
21 Citing *Turoff* 853 F.2d at 1044.

22 Finally, where two charged conspiracies are
23 "intertwined" with each other, they are sufficiently related to
24 justify joinder. Citing *Attanasio*, 870 F.2d at 815.

25 Rule 14 of the Federal Rules of Criminal Procedure

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1 provides, however, that even where joinder is proper under Rule
2 8(b), a Court may grant severance "if the joinder of offenses
3 or defendants in an indictment appears to prejudice a defendant
4 or the government." Citing Federal Rule of Criminal Procedure
5 14.

6 In order to prevail on a severance motion under Rule
7 14, however, a "defendant must show not simply some prejudice,
8 but substantial prejudice." Citing *United States v. Sampson*
9 385 F.3d 183 at 190 (2d Cir. 2004).

10 A defendant has the "extremely difficult burden" of
11 showing that he would be so prejudiced by joinder that he would
12 be denied a fair trial. Citing *United States v. Casamento*, 887
13 F.2d 1141 at 1149 (2d Cir. 1989).

14 It is not enough for a defendant to show that he "may
15 have a better chance of acquittal in a separate trial." Citing
16 *Zafiro v. United States*, 506 U.S. 534 at 540 (1993).

17 Instead, "a district court shall grant a severance
18 under Rule 14 only if there is a serious risk that a joint
19 trial would compromise a specific trial right of [a defendant]
20 or prevent the jury from making a reliable judgment about guilt
21 or innocence." *Id.* at page 539.

22 Even in those rare instances where a defendant
23 establishes a "high" risk of prejudice, "Less drastic measures,
24 such as limiting instructions, often will suffice to cure any
25 risk of prejudice." *Id.*

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1 The Second Circuit has noted that "the principals that
2 guide the district court's consideration of a motion for
3 severance usual counsel denial." citing *United States v. Rosa*,
4 11 F.3d 315 at 341 (2d Cir. 1993).

5 As I noted at the outset, Wang's motion is premised on
6 alleged mutually antagonistic defenses. Wang says that he had
7 "zero authority over the company" was subordinate to other
8 company figures and was "called in as a substitute" for
9 codefendant Yang to attend the meetings which led to his
10 arrest. Citing Wang's severance brief, Docket No. 76 at pages
11 4 to 5.

12 He also says that Ms. Chen was "assigned" to attend
13 the same meetings as a translator. *Id.* at page 5. Wang
14 speculates that "Ms. Chen's defense will include arguments to
15 the effect that she was just translating the conversations
16 between Mr. Wang and the confidential sources or just following
17 orders from Mr. Wang, who was supposedly higher up in the
18 ladder than her." *Id.*

19 But it is mere speculation what Ms. Chen's defense
20 will be at trial. And speculation cannot provide a basis for a
21 severance. "Defenses are mutually antagonistic when accepting
22 one defense requires that the jury must, of necessity, convict
23 a second defendant." Citing *United States v. Yousef*, 327 F.3d,
24 56 at 151 (2d Cir. 2003).

25 "Mere finger-pointing" among codefendants "does not

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1 require severance" however. Citing *Casamento* 887 F.2d at 1154.
2 And even "mutually antagonistic defenses are not prejudicial
3 *per se*." Citing *United States v. Haynes*, 16 F.3d 29 at 32 (2d
4 Cir. 1994). Instead a defendant must show that antagonistic
5 defenses will result in prejudice such that "there is a serious
6 risk that a joint trial would compromise a specific trial
7 right." Citing *Zafiro*, 506 U.S. at 539.

8 Moreover, "Rule 14 does not require severance even if
9 prejudice is shown. Rather, it leaves the tailoring of relief
10 to be granted, if any, to the district court's sound
11 discretion." Citing *Yousef* 327 F.3d at 151. "It is well
12 established that a court can cure prejudice caused by allegedly
13 antagonistic defenses through the use of jury instructions."
14 Citing *United States v. Hameedi*, 2017 WL 5152991 at *5
15 (S.D.N.Y. Nov 3, 2017).

16 Here, Defendant Wang has not set forth mutually
17 antagonistic defenses, nor has he demonstrated that he will
18 suffer prejudice to a specific trial right if a severance is
19 not granted. A jury could, for example, accept Chen's defense
20 that she was merely translating at the meetings and following
21 orders and still acquit Wang due to his alleged lack of *mens*
22 *rea*. And to the extent that Wang intends to argue that a more
23 senior executive at Hubei was the real source of authority, and
24 that this executive sent Wang and Chen to the meetings, due to
25 Codefendants Yang's unavailability. Both Wang and Chen could

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1 simultaneously pursue that defense. Even if Chen were to
2 "point the finger" at Wang, "the mere fact that codefendants
3 seek to place the blame on each other is not the sort of
4 antagonism that requires a severance." Citing *United States v.*
5 *Villegas*, 899 F.2d, 1324 at 1346 (2d Cir. 1990).

6 Indeed, courts routinely deny severance motions
7 premised on such "finger-pointing" arguments. In *Zafiro*, for
8 example, two defendants argue that a severance was necessary
9 because they "both claim they are innocent and each accuses the
10 other of the crime." Defendants argue that absent of
11 severance, the "jury will conclude, one, that both defendants
12 are lying and convict them both on that basis; or, two, that at
13 least one of the two must be guilty without regard to whether
14 the government has proved its case beyond a reasonable doubt."
15 Citing *Zafiro* 506 U.S. at 540.

16 In ruling that a severance was not warranted, the
17 Supreme Court stated that "even if there were some risk of
18 prejudice, here it is of the type that can be cured with proper
19 instructions." *id.* The same reasoning applies here. To the
20 extent Wang intends to argue at trial that he was duped by
21 Chen's "selective; translations." See Wang's Severance Brief
22 Docket No. 76 at page 5. That type of "finger-pointing"
23 defense provides no basis for severance. See, for example,
24 *Cardascia* 951 F.2d at 485 to 486 (defendants claim that he was
25 "duped by the codefendants." "Plainly is typical of

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1 coconspirator trials and does not warrant severance.")

2 Also, *United States v. Louis*, 2018 WL 6241445 at *2
3 through 4 (S.D.N.Y. Nov. 29, 2018). Denying a severance motion
4 where Defendant A claim "that he was duped by" Defendants' B
5 and C, while Defendant B "stated that he was used and
6 victimized by "Defendant A" because "numerous courts have
7 rejected what has been called, in common parlance, the
8 finger-pointing argument.")

9 The cases Wang cites, see Wang Severance Brief Docket
10 No. 76 at pages 3 through 4, are not to the contrary because
11 they involve circumstances in which a jury could not accept one
12 defendant's defense without rejecting the other defendant's
13 defense. See *United States v. Basciano*, 2007 WL 3124622 at *8,
14 (E.D.N.Y. Oct. 23, 2007). Serving a defendant in a capital
15 trial because "to the extent that the jury believes [one
16 defendant's] defense that he rescinded the hit on Pizzolo and
17 [the other defendant] reordered it, the defenses are more than
18 merely inconsistent, they are in direct conflict.")

19 Also, *United States v. Copeland*, 336 F. Supp. 2d 223
20 to 224 (E.D.N.Y. 2004). (Granting severance where one
21 defendant argued that "he was not involved in the bank robbery"
22 while the other planned to introduce evidence that it was the
23 first defendant, who "entered the bank to commit the robbery.")

24 Accordingly, Wang's motion for severance on the
25 grounds of mutually antagonistic defenses is denied.

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1 Wang has also moved to strike the first two paragraphs
2 of the indictment as "unnecessary," "irrelevant," and
3 "prejudicial" surplusage. Citing Wang's motion to strike,
4 Docket No. 77, page 2.

5 The first two paragraphs of the S1 indictment
6 discussed the deadly nature of fentanyl, the number of
7 Americans who have died from it and the massive seizures of
8 fentanyl that have taken place in the United States. See the
9 S1 indictment, Paragraphs 1 through 2. While we now have a
10 superseding indictment, there is no change in the first two
11 paragraphs. Accordingly, I will rule on Wang's motion to
12 strike even though it is addressed to the original indictment.
13 It is not my practice to give "speaking" indictments such as
14 the S1 indictment to the jury or to read speaking indictments
15 to the jury. I do not intend to vary from my standard practice
16 in this case. Accordingly, I'm denying Wang's motion to strike
17 as moot.

18 We do have a schedule trial date of January 13, 2025.
19 We do have an exclusion of time through the trial date. I am
20 going to set a final pretrial conference for January 10, 2025,
21 at 10:00 a.m. Although, I may well see you before then, I want
22 to emphasize to counsel that I'm available to you at any time
23 if you feel that a conference is necessary.

24 As to motions *in limine*, proposed *voir dire*, proposed
25 request to charge, they will be due on December 13, 2024, with

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1 responsive papers due on December 20, 2024. These dates were
2 previously provided in my April 8, 2024, order which is Docket
3 No. 59.

4 Is there anything else on behalf of the Court at this
5 point?

6 MR. SULLIVAN: No, your Honor. Thank you.

7 THE COURT: Mr. Aldridge?

8 MR. ALDRIDGE: No.

9 THE COURT: Mr. Kirton?

10 MR. KIRTON: No, your Honor. Thank you.

11 THE COURT: Thank you all. We are adjourned.

12 (Adjourned)